

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4814 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy  
of the judgement?
  4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?  
2 to 5 No
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NAINKHAN SHAREFKHAN (THORI)

Versus

SURESHCHANDRA UMAPATI PANDE

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Appearance:

MR KJ SHETHNA for Petitioner

MR YN OZA for Respondent No. 1

MR AJ DESAI APP for Respondent No. 2, 3, 4

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/04/98

ORAL JUDGEMENT

Heard learned Advocate Mr. K.J.Shethna appearing  
on behalf of the petitioner, learned Advocate Mr. Rasesh  
Oza for Mr.Y.N. Oza for respondent No.1 and Mr.A.J  
Desai, learned APP for Respondents No. 2, 3, & 4.

2. It may be noted that during the hearing, the petitioner has not pressed for the relief prayed vide Para 16 (A) & 16(C) without prejudice to the contentions while deciding the present petition and has urged that only prayer 16(B) may be considered and decided.

3. The petitioner has challenged the legality and propriety of the order passed by learned Metropolitan Magistrate, Court No.11 on 27th June, 1997, granting 'A' Summary in the Inquiry Proceedings initiated from Crime Register No. 21 of 1996 dated 30th January, 1996.

4. That an FIR was lodged at Gaekwad Haveli Police Station, Ahmedabad, on 29.1.1996 around 11.00 p.m. to 11.30 p.m. by present petitioner in respect to an incident where an offence made punishable under Sections 302 & 307 of IPC is alleged to have been committed on the facts and circumstances stated in the FIR, which is produced vide Annexure-'A' to the petition. That the Investigation Officer after conducting the investigation appears to have filed a report under Section 169 of the Cr.P.C. as per Annexure 'E' to the petition and accordingly 'A' Summary is claimed. On perusal of papers, it appears that learned Metropolitan Magistrate has passed the order on 27.6.1997 and has granted 'A' Summary as prayed. The said order is under challenge.

5. On behalf of the petitioner, reliance is placed on the decision rendered by the Supreme Court in the matter of UNION PUBLIC SERVICE COMMISSION v. PAPAIAH AND OTHERS, reported in AIR 1997 SC 3876 to support the contention that as per the accepted proposition of law before granting 'A' Summary on the basis of the report under Section 169 filed by Investigation Officer, the court has to give an opportunity to the original informer to make submission. That non-compliance of such procedure, vitiate the order and as such impugned order is illegal and bad in law.

6. In the instant case, it is apparent from the impugned order itself. That learned Metropolitan Magistrate has failed to issue requisite notice before considering the report filed by the Investigation Officer under Section 169 of the Cr.P.C. Under the circumstances, said order cannot be sustained and it is necessary to set aside the order and send back the matter to the trial court to follow the due procedure as prescribed in the above stated judgment and to decide de novo.

7. On the basis of above stated discussion, the

impugned order passed by learned Metropolitan Magistrate, Court No.11, dated 27.6.1997, granting 'A' Summary in the matter of Crime Register No. 21/96 registered at Gaekwad Haveli Police Station, Ahmedabad, is hereby set aside and quashed. The matter is remanded back with a direction that trial court shall consider the report filed by the Investigation Officer under Section 169 of the Cr.P.C. in the subject matter after issuing due notice to the original informer and to give opportunity to the parties to make submission and decide the matter de novo. Rule is made absolute accordingly. No order as to costs.

8. Office is directed to return the original Record and Proceedings along with the writ to the court of Metropolitan Magistrate.

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p.n.nair